

**Department of Natural Resources
Proposed Amendments to 4684 (H-4)**

The State of Michigan was required to pass and preserve the following law in order to receive federal Pittman Roberson wildlife restoration funds. Currently the Department receives approximately \$20 million a year from this fund to manage wildlife in the state. The law states very clearly that funds accruing to this state from license fees paid by hunters shall not be used for any purpose other than game and fish activities under administration of the department.

The proposed amendments to HB 4684 reflects this responsibility of the state which was emphasized in a December 23, 2011 letter from the US Fish and Wildlife Service to Representatives Foster and McMaster. (copy attached and cited below)

**NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION ACT
(EXCERPT)**

Act 451 of 1994

Part 405

WILDLIFE RESTORATION, MANAGEMENT, AND RESEARCH

324.40501 Wildlife restoration, management, and research projects; authority of department to cooperate with federal government; use of hunters' license fees.

Sec. 40501.

The department shall perform such acts as may be necessary to conduct and establish wildlife restoration, management, and research projects and areas in cooperation with the federal government under the Pittman-Robertson wildlife restoration act, 16 USC 669 to 669i, and regulations promulgated by the United States secretary of the interior under that act. In compliance with that act, funds accruing to this state from license fees paid by hunters shall not be used for any purpose other than game and fish activities under the administration of the department.

1. Amend page 2, line 12 by restoring the definition to its original language

(h) "Park and saddle trailways" means trailways and equine access locations that may be used by park and saddle animals.

2. Amend page 2, Line 16 by striking "AT ANY TIME"

Note: For amendments one and two above: see page 2, second paragraph of the attached letter *"These sections of HB 4684 override the authority of the MDNR to manage for wildlife restoration. As discussed in recent phone conversations between Wildlife and Sport Fish Restoration Programs (WSFR) staff and members of the State Legislation any statement such as "currently existing" or "previous were" or at any time is an example. This is conflict with the Federal Aid in Wildlife Restoration Act, Federal Aid in Sport Fish Restoration and State Assent Legislation as it removes the capability of the MDNR to exclude or otherwise regulate such use."*

3. Amend page 3, line 13, by striking (B)

Note: See page three, first paragraph of attached letter *"As indicated in phone conversations with legislative members, the reference to and citation of our Service Manual is inappropriate, incomplete and inaccurate."*

4. Amend page 8, line 24 by striking "BASED UPON A BIOLOGICAL ASSESSMENT"

5. Amend page 8, line 26 by adding after federal law: "STATE LAW"

6. Amend page 9, line 24, by adding after federal law: "STATE LAW"

7. Amend page 9, line 2 by striking A BIOLOGICAL ASSESSMENT CONDUCTED UNDER THIS SUBSECTION SHALL USE SOUND FISH AND WILDLIFE MANAGEMENT SCIENCE AND TECHNIQUEST APPROVED BY THE UNITED STATES FISH AND WILDLIFE SERVICE.

Note: See page one of the attached letter *"For grant and license acquired land, no uses other than those described in law for wildlife and sport fish benefit can be allowed. Also on page two, third paragraph, ... "forces the MDNR to allow horses unless it proves otherwise is contrary in relation to the acts and regulation."*

8. Amend page 9, line 9 by adding NECESSARY MAITNENACE, OR FOR REASONS RELATED TO THE MISSION OF THE DEPARTMENT.

Note: See first note



United States Department of the Interior



FISH AND WILDLIFE SERVICE

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IN REPLY REFER TO:

FWS/R3/MBSP-WSFR

DEC 23 2011

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P.O. Box 30014
Lansing, MI 48909-7514

Honorable Greg MacMaster
Michigan House of Representatives
S-1389 House Office Building
P.O. Box 30014
Lansing, MI 48909-7514

Dear Mr. Foster and Mr. McMaster:

Thank you for your phone call on December 9, 2011. We have prepared a response to your phone request and to the email request received from Mr. Jason Puscas on November 21, 2011, regarding the language contained in H-1 Substitute for HB 4684. We appreciate the Michigan Legislature sending the proposed bill to us for our updated analysis and opinion on the amended language and potential for diversion of license revenue. In this letter, we identify the items in the bill that could cause a diversion situation to occur. We follow with a section of recommendations.

Introduction:

The U.S. Fish and Wildlife Service (Service) and the Michigan Department of Natural Resources (MDNR) are Federal and State partners under Federal law (16 USC 669). Together, the Service and MDNR are responsible for ensuring that hunting and fishing license revenue is used only for those purposes set out in Federal and State law. This protection is important to those that have paid the excise tax on sporting arms and ammunition. Their continued purchase of licenses fuels the success of the program. We protect the assets acquired with license fees and excise taxes for the sole purposes of wildlife and sport fish restoration. The Service takes this responsibility very seriously. For grant and license acquired land, no uses other than those described in law for wildlife and sport fish benefit can be allowed. We provide MDNR with the support needed to maintain program integrity and eligibility.

Our letters of November 4, 2011, February 10, 2010, November 13, 2009, April 24, 2009, and June 26, 2008, state that the problem with all versions of the equine recreation legislation we have seen is that they contain language that would mandate pack and saddle animal recreation on areas acquired with hunting and fishing license revenue. This causes a direct conflict with Federal law and a strong potential for diversion of funds. We see in the latest version of HB 4684, Insertion of the requirements of MDNR to follow law and regulation that governs their continued receipt of funds. The sections that cause a direct conflict, however, are left in, causing Internal inconsistency in the legislation and confusion for the public. In an effort to reduce the amount of paper in enclosures, we have not enclosed copies of prior correspondence letters with this correspondence. If you would like a complete copy of all correspondence, the total of which is greater than 50 pages in length, please contact me directly.

Sections of Draft House Bill 4684 that conflict with Federal Aid in Wildlife Restoration Act and State Assent Legislation:

Sections that need to exempt license and grant acquired lands to prevent loss of control

These sections of HB 4684 override the authority of the MDNR to manage for wildlife restoration. As discussed in recent phone conversations between Wildlife and Sport Fish Restoration Programs (WSFR) staff and members of the State Legislature, any statement such as: "currently existing" or "previous were" or "at any time" is an example (Page 2, line 2 (d); Page 2, line 14 – 16 (h); Page 2, 17 (l); Page 2, line 19 (j); Page 2, line 21(k). The premise that all State-owned public lands are open to equine use and equine trails unless specifically closed overrides MDNR management authority. This is in conflict with the Federal Aid in Wildlife Restoration Act, Federal Aid in Sport Fish Restoration, and State Assent Legislation, as it removes the capability of MDNR to exclude or otherwise regulate such use. While Section 72115 (Page 8, Lines 15 through 27 and Page 9, Lines 1 and 2) appears on the right track and reaffirms the MDNR abilities due to links with Federal Law and Grants. This section is deep within the language of the bill. The simplest fix is to state early in the legislation that MDNR lands purchased or managed with hunting and fishing license fees and wildlife and sport fish grant funding for wildlife and sport fish purposes are exempt from the definitions or mandates of this draft legislation.

Additionally, Section 72115 (Page 8, Lines 15 through 27 and Page 9, Lines 1 and 2) forces the MDNR to allow horses unless it proves otherwise is contrary in relation to the acts and regulations. In practice, this typically creates an inefficient regulatory burden for the administering agency, in this case the MDNR.

Recommendations for developing a bill that is both compliant with the Federal Aid In Wildlife Restoration Act and State Assent Legislation and clear to the stakeholders:

As indicated in phone conversations with legislative members, the reference to and citation of our Service Manual is inappropriate, incomplete and inaccurate. The reference will continue to create unfulfilled expectations among stakeholders. This section of the Service Manual specifically addresses grant-acquired land and, for example, is not applicable to Pigeon River Country State Forest because the vast majority of land was acquired with license revenue and not with the use of grant funds. HB 4684's reference obscures the subtle, yet critical, difference between license and grant acquired land. We recommend deleting this section, since this language has caused and will continue to perpetuate misunderstanding and mistrust between stakeholders and government agencies.

In our letter of April 26, 2010 to Mr. Mike Byrne, Deputy Director, Office of the Governor, regarding previous proposed legislation, we advised that continuing the process of proposing and passing such legislation unfairly raises expectations among the equine recreation community that the Service has or will approve equine use. This expectation appears to drive continued modification of State law, yet Federal law remains unchanged. The review and reports prepared as required by previous State legislation (Public Acts 45 and 46 of 2010) confirmed and reaffirmed the equine restrictions on the Lapeer SGA, Lost Nation SGA, and Gladwin Field Trial Area. These areas were acquired, at least in part, with WSFR grant funds and would have had to meet the criteria as outlined in the Service Manual subject to Service review and continued monitoring by both the Service and MDNR. The proposed legislation, although not specific, appears to be targeted to the Pigeon River Country State Forest. In past legislation (Public Acts 45, and 46 of 2010) we provided our analysis and opinion of the legislation in order to assist the State of Michigan and to prevent a diversion situation. Rather than work on new or revised legislation, we suggest that the process identified in Public Acts 45 and 46 be allowed to continue as it was applied to Lapeer SGA, Lost Nation SGA and Gladwin Field Trial Areas.

Given our understanding of how limited the State budget is, we are concerned that the efforts directed toward advancing equine facilities and trails as a result of existing and proposed State law will take precedence over MDNR wildlife management responsibilities in the Pigeon River Country and other locations. MDNR must be able to fulfill their legal grant obligations, including having the resources necessary to implement wildlife management plans and conduct grant activities as planned and budgeted. Time and effort spent on non-wildlife dependent recreational activities, such as equine trail development, are not eligible for Federal funding or use of license fees. We are perplexed by continued

Mr. Frank Foster and Mr. Gregg McMaster

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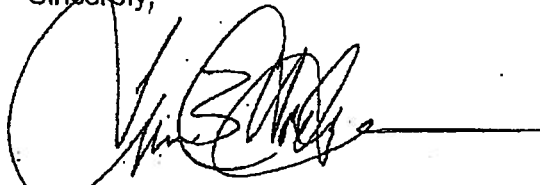
efforts to use language that infers or implies that expanded equine use is possible, when all five previous letters consistently identified the potential loss of over \$25 million dollars of federal funding as a result.

In closing, our analysis of the revised language determined that there remains the strong potential for a finding of diversion and loss of eligibility to receive Federal funding. To clearly prevent a potential diversion situation, we strongly suggest exempting license-acquired land and WSFR grant-acquired land for any non-wildlife or non-sportfish purpose, including the purposes of providing equine facilities or trail use.

If you would like more information regarding Federal law, regulation, policy, or our authorities, please refer to our letter of November 4, 2011. We maintain a cooperative partnership with Michigan through the MDNR as prescribed in the Federal Aid in Wildlife and Federal Aid in Sport Fish Restoration Acts. Part of our responsibility is to ensure program integrity for the benefit of MDNR and the hunters, anglers, boaters and shooters of Michigan.

If you have any additional questions please feel free to call me at (612) 713-5131.

Sincerely,

A handwritten signature in black ink, appearing to read 'J. B. Hodgson', followed by a horizontal line.

James B. Hodgson, Chief
Wildlife and Sport Fish Restoration Programs

CC: , Mr. Eric Sink, Federal Aid Coordinator, Michigan DNR
Mr. Stephen Beyer, Federal Aid Coordinator, Michigan DNR
Ms. Christine Hanaburgh, Assistant Federal Aid Coordinator, Michigan DNR
Ms. Erin McDonough, Executive Director, Michigan United Conservation Club
Mr. Kent Wood, Legislative Affairs Manager, Michigan United Conservation Club